

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-3043**September Term, 1999****91cr00559-16****Filed On: August 21, 2000** [537748]United States of America,
Appellee

v.

Derrin A. Perkins,
Appellant**BEFORE:** Sentelle, Henderson, and Tatel, Circuit Judges**ORDER**

Upon consideration of the motion to dismiss and amendment thereto, and the opposition thereto; and the request for a certificate of appealability and the opposition thereto, it is

ORDERED that the certificate of appealability be denied and the motion to dismiss be granted substantially for the reasons stated in the district court's opinions filed August 17, 1999 and January 27, 2000. Appellant has not made a substantial showing of the denial of a constitutional right warranting the issuance of a certificate of appealability. 28 U.S.C. § 2253(c)(2). Moreover, although this court has not yet decided whether type of drug is a sentencing factor for the judge to determine, shortly before appellant's trial, this court held that "quantity of drugs involved in a conspiracy or distribution charge is not a basic element of the offense, but rather a sentence factor for the judge to determine." See United States v Lam Kwong-Wah, 966 F.2d 682, 685 (D.C. Cir. 1992); United States v. Patrick, 959 F.2d 991, 995-96 n.5 (D.C. Cir. 1992). Accordingly, the law concerning treatment of the quantity of drugs was settled at the time of trial, and counsel was not ineffective for failing to request a special verdict on this issue.

Because no certificate of appealability has been allowed, no mandate will issue.

Per Curiam